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IN THE

Supreme Court of the United States

October Term, 1941.

No. 19.

PHOENIX FINANCE CORPORATION, a Corporation of the State of Delaware,

Petitioner,

v.

IOWA-WISCONSIN BRIDGE COMPANY, a Corporation of the State of Delaware.

Respondent.

Supplemental Brief of Petitioner on Section 265 of the Federal Judicial Code.

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SUPPLEMENTAL BRIEF OF PETITIONER ON SECTION 265 OF THE FEDERAL JUDICIAL CODE.

HISTORICAL BACKGROUND.

At the conclusion of reargument, counsel were requested to submit additional briefs on the historical development of Section 265 of the Judicial Code and a review of prior decisions of the court with respect thereto. The Section provides that:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law, relating to proceedings in bankruptcy." (*36 Stat. 1162; 28 U. S. C. 379.*)

There is nothing to be gained by a mere digesting of each case which has been before this court, as there is no

way to reconcile the various and apparently conflicting results reached by the court in the many cases arising under the Section. Sometimes the mandate of the statute has been rigidly enforced, other times explained away, and in a few instances ignored. In fact, it has been said that the apparent result of prior judicial interpretation is that the statute is not to be read as it was drafted, but as follows:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy, *except where a suit is first filed in a federal court and afterwards in a state court, or where such injunction is necessary, in aid of jurisdiction already acquired by the federal court.*" [1]

It is the position of petitioner that such amendment and emasculation of the clear and unambiguous language of Section 265 by judicial construction is untenable and that the court should reconsider the subject and if necessary restore the effect of this Section as clearly intended by the Congress.

In view of the political background behind the adoption by Congress of the Act of 1793 (Section 265 of the Judicial Code minus the bankruptcy exception), it is clear that Congress meant precisely what it said, namely, that no injunction should be granted to stay any proceedings in state courts.[2]

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[1] *43 Harvard Law Review 345 (369).*

[2] Federal Injunction against Proceedings in State Courts: the Life History of a Statute, *Volume 30, Michigan Law Review, page 1145. Edgar Noble Durfee, Robert L. Sloss.*

As stated by Mr. Charles Warren:

> "This provision was undoubtedly made in consequence of a report by Attorney General Edmund Randolph to the House of Representatives, December 27, 1790, as to desirable changes in the judiciary act of 1789 in which he recommended that the act provide that 'No injunction in equity shall be granted by a district court to a judgment at law of a state court.' "

Mr. Warren further states that the restriction in the statute

> "' * * * was a significant illustration of the strong apprehension felt by early Congresses at the danger of the encroachment by federal courts on state jurisdiction, * * *"[3]

Federal and State Court Interference, 43 Harvard Law Review 345 (347).

Despite the judicial distinctions drawn over the past one hundred and forty-eight years, it is submitted that this Court has adopted a policy of limiting the authority of the lower federal courts over matters primarily of state concern, and in effect, has returned to the judicial theory of the founders of the Republic. See *Railroad Commissioners of Texas, et al. v. Pullman Co.*, 312 U. S. 496, 61 Supr. Ct. 643, 85 L. Ed. 580.

It is significant that in 1793, the Third Congress was framing the eleventh amendment to the Federal Constitution which granted to the states the privilege of immunity

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[3] "Although not lacking in forerunners, the *Pullman* case may prove to be a landmark on the road toward a reshaping of the business of the federal courts along more appropriate lines." The Pullman Case: A Limitation on the Business of the Federal Courts, *53 Harvard Law Review 1379 (1381)*.

from suit in the federal courts. In fact, the preceding ten amendments to the Federal Constitution were all restrictive in character, five of them being directed toward the judiciary. The question of states' rights was paramount in the minds of the majority of the members of Congress.

JUDICIAL INTERPRETATION OF THE STATUTE OF 1793.

(a) *In General.*

The statute of 1793 was first before the Supreme Court in the case of *Diggs & Keith v. Wolcott*, 4 Cranch 179, 2 L. Ed. 587 (1807). In reversing a decree of a Federal Circuit Court enjoining an action in a state court of Connecticut, the court stated that:

> "a Circuit Court of the United States had not jurisdiction to enjoin proceedings in a state court."

The decision is unequivocal and it would seem necessarily to follow that an injunction against proceedings in a state court may not be granted by a federal court in any case, except to the extent that the statute might be limited by the provision of the Federal Constitution vesting original jurisdiction in the Supreme Court, or amended by Congress. The statute having been interpreted literally, this interpretation was adhered to for more than sixty years. As stated in *Volume 30, Michigan Law Review, 1148:*

> "Until the seventies it was, to say the least, doubtful whether there was any exception to the literal reading of the statute."[4]

[4] See the case of *Daly v. Sheriff* (D. C. La. 187), 1 Woods 175, holding that a federal court was without authority to issue an injunction against a levy on complain-

No decision expressly based upon the statute seems to have been made between the year 1807 and the year 1872, but in the latter year in the case of *Watson v. Jones*, 13 Wall. 679, in an opinion delivered by Mr. Justice Miller, it was held that an inferior federal court was forbidden by the Act of 1793 to enjoin the defendants in a state proceeding, "to take the possession which the unexecuted decree of the Chancery Court requires the Marshall to deliver to them," and as late as 1929, a federal court which had appointed a receiver for the property of a corporation was deemed to have no right either to enjoin a creditor from prosecuting a suit to establish his debt in a state court or to refuse recognition of the claim when fixed by the judgment of such court. *Riehle v. Margolies*, 279 U. S. 218, 49 Supr. Ct. 310, 73 L. Ed. 669.[5]

Before considering what effect, if any, judicial decisions have had on the Act of 1793, it is necessary to note that Congress has modified the statute in four instances:

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ant's property under process of a state court to which the complainant was not a party. It had been earlier held in the case of *Cropper v. Coburn* (C. C. Mass. 1855), Fed. Case No. 3416, that execution process against property of a stranger to an action was not a "proceeding" in the state court, within the sense of the Statute of 1793.

[5] Between 1872 and 1929, the Supreme Court decided ten cases in which injunctions of federal courts were held void by reason of the Act of 1793; Haines v. Carpenter, 91 U. S. 254 (1876); Dial v. Reynolds, 96 U. S. 340 (1877); Citizens' Bank v. Board, 98 U. S. 140 (1878); Lawrence v. Morgan's R. R., 121 U. S. 634 (1887); *In re* Sawyer, 124 U. S. 200 (1888); United States v. Parkhurst-Davis Mercantile Co., 176 U. S. 317 (1900); Mutual Reserve Fund Life Ass'n v. Phelps, 190 U. S. 147 (1903); Hull v. Burr, 234 U. S. 712 (1914); Essanay Film Mfg. Co. v. Kane, 258 U. S. 358 (1922); Riehle v. Margolies (supra).

(1) In re-enacting the statute in 1874, the exception as to proceedings in bankruptcy was added. (Rev. Stat. 1878, Section 720, 28 U. S. C., Section 379 (1926).[6]

(2) In the Steamship Limited Liability Act of 1851, Congress authorized injunctions to be issued by federal courts to stay state court proceedings. (Rev. Stat. 1878, Section 4283-4286, 46 U. S. C., Section 183-186.)

(3) Removal Statutes (28 U. S. C. Sections 71-83). See *Bondurant v. Watson*, 103 U. S. 281, 26 L. Ed. 447 (1881), wherein the decision upholding the granting of an injunction rests on the ground that the applicable removable statute (1875) in effect amended the re-enactment of the anti-injunction statute in 1874.

(4) Norris-La Guardia Act (March 23, 1932, Chapter 90, Sections 1-15, 47 Stat. 70-73). Presumably an injunction against proceedings in a state court might be permitted if sought in conformity with this statute.

(b) *Ancillary or Auxiliary Injunctions.*

Despite the explicit words of the statute, in 1875, the Supreme Court held in the case of *French v. Hay*, 22 Wall. 238, 250, 22 L. Ed. 854, 857, that when a federal court has once obtained jurisdiction of a case, it would allow an injunction against one of the parties, preventing him from entering suit in a state court to enforce a judgment in a matter on which the federal court was to be called upon to decide. In deciding this case between a citizen of Virginia

[6] "The Revised Statutes of 1874 re-enacted the provision of 1793, but introduced the bankruptcy exception. Rev. Stat. Sec. 720. That might be expected to stiffen the statute in all other respects by virtue of the canon of interpretation, *expressio unius*," 30 *Michigan Law Review* 1144 (1149 footnote 15).

and a citizen of Pennsylvania, the court allowed an injunction to the citizen of Pennsylvania, and ignored the statute of 1793. The bill for an injunction was considered as an auxiliary and not an original one, and in effect, the statute was judicially amended so as to permit an injunction where such was necessary to aid jurisdiction already acquired by the federal court.

(c) *Injunction against the Court and Injunction against the Parties.*

In the case of *Marshall v. Holmes*, 141 U. S. 589, 12 Supr. Ct. 62, 35 L. Ed. 870 (1891), an injunction was permitted against proceedings in a state court on the grounds that while the federal court could not require the state court to vacate its own judgment, yet it might decree that the successful party in the state court might not enjoy the advantage of his judgment if the facts justify such relief. The court stated:

> "A decree to that effect would operate directly upon him, and would not contravene that provision of the statute prohibiting a court of the United States from granting a writ of injunction to stay proceedings in a state court."

That this distinction is completely without merit despite approval in the Supreme Court in *Simon v. Southern Railroad Co.*, 236 U. S. 115-126, 35 Supr. Ct. 255, 59 L. Ed. 492 (1915); Wells Fargo & Co. v. Taylor, 254 U. S. 175-184, 41 Supr. Ct. 93, 65 L. Ed. 205 (1920), it is necessary only to refer to the language of this court in the case of *Oklahoma Packing Co. v. Oklahoma Gas & Electric Co.*, 309 U. S. 4, 60 Supr. Ct. 215, 84 L. Ed. 537 (1940), the court stating in reference to an injunction, "That the injunction was a

restraint of the parties and was not formally directed against the state court itself is immaterial."

(d) *Distinction between Proceedings before Judgment and Proceedings after Judgment.*

In the case of *Simon v. Southern Railroad Co.*, (supra),[7] a further distinction was drawn by the Supreme Court. While recognizing the statute prohibiting United States Courts from staying "proceedings" in a state court, the court held that, nonetheless, the statute did not prevent courts of the United States from enjoining a party from gaining the fruits of a fraudulent or void judgment. It is hardly necessary to point out that the word "proceedings" in common usage embraces proceedings both before and after judgment. A decision which endeavors to reconcile itself with Section 265 of the Judicial Code on the grounds that the injunction permitted is not against "proceedings in a state court" because the judgment is already entered, fails completely to consider the purpose for which the statute was adopted, namely, the defense of state courts from federal encroachment.

As a corollary to the *Simon* case, it was held in *Essanay Film Mfg. Co. v. Kane*, (supra), that an injunction might not be granted while proceedings were still pending in the state court. A rule of law which allowing expenses to increase until a judgment is entered in a state court before the granting of an injunction is an illogical result of a labored interpretation of the word "proceedings."

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[7] *See 30 Michigan Law Review, pages 1155-1161.*

(e) *Distinction between Proceedings in Rem and Proceedings in Personam.*

The gravamen of the decision in *Kline v. Burke Construction Co.*, 260 U. S. 226, 43 Supr. Ct. 79, 67 L. Ed. 226 (1922), is that an ancillary injunction will not be granted by a federal court except where the control of the federal court over specific things, or persons is at stake. The decision holds that when one court takes into its jurisdiction a specific thing, that thing or res, is completely withdrawn from the judicial power of any other court. Another holding of the decision would seem to be that superiority of judgment depends on whether the state or federal court first enters judgment, however, in the case of *French v. Hay* (supra) in which no res was held by the federal court, a judgment was enjoined in the state court before the case came on to be heard in the federal court. There would seem to be no way of explaining the irreconcilable conflict between these two decisions.

If the rule as to control of the res is to be accepted, as grounds for an ancillary injunction, there is no basis for relief in the case at bar. A foreclosure action in rem in Iowa cannot conceivably bear fruits beyond the issues of the cause, so as to bar the present petitioner from proceeding in Delaware on rights of action which were not part of the trust res in Iowa.

As stated in *Guardian Trust Co. v. Kansas City Southern Railway Co.*, (C. C. A. 8) 171 Fed. 43 (50):

> "• • • the unquestioned rule that the pendency in a state or other court of an action *in personam* which involves no claim to or lien upon specific property in the possession or under the dominion of a national court of

> equity and no issue of which, that court has acquired exclusive jurisdiction, presents no ground for a dependent bill to stay it."

(f) *State Judgment Obtained by Fraud or Mistake.*

In the case of *Wells Fargo & Co. v. Taylor*, 254 U. S. 175, 41 Supr. Ct. 93, 65 L. Ed. 205 (1920), the court held that Section 265 of the Judicial Code did not prevent federal courts from depriving a party,

> "of the benefit of a judgment obtained in a state court in circumstances where its enforcement will be contrary to recognized principles of equity and the standards of good conscience. * * * 'The Circuit Courts of the United States have the same jurisdiction and power to enjoin a judgment plaintiff from enforcing an unconscionable judgment of a state court, which has been procured by fraud, accident, or mistake, that they have to restrain him from collecting a like judgment of a federal court.' "

If the court intended to limit the exception to instances of "fraud, accident, or mistake", such an exception has no bearing on the case at bar inasmuch as there is no contention that the judgment entered for the plaintiff, Phoenix Finance Corporation, in the Superior Court of New Castle County, Delaware, was entered fraudulently, accidentally, or through a mistake. Likewise, the other actions pending in Delaware prior to the injunction were all properly instituted and general appearances were entered by the defendant.

If the case intended to pass on the broader phases of injunction relief against proceedings in state courts, it is significant to note that in the case of *Essanay Film Mfg. Co. v. Kane* (supra), decided after the *Wells Fargo* case, it is stated by Mr. Justice Pitney:

> "• • • since 1793, the prohibition of the use of injunction from a federal court to stay proceedings in a state court has been maintained continuously, and has been consistently upheld."

CONCLUSION.

While Section 265 of the Judicial Code is not a jurisdictional statute, it is nonetheless a legislative limitation on the general equity powers of the federal courts, and can in no way be deemed to be controlled or affected by the general terms of Section 262 of the Judicial Code.

It cannot be denied that the Supreme Court in the past has failed consistently to sustain the anti-injunction statute, but it is respectfully urged that judicially engrafted amendments to the act be cut from the language approved by the Congress.

That such action on the part of this court is not only in conformity with the duties of the court, but also of practical necessity is well expressed in the words of Mr. Justice Frankfurter written in 1928:

> "If diversion from the lower federal courts of controversies which state courts can settle adequately enough would help save the Supreme Court for its more essential labors, this would be a gain of moment."[8]

Respectfully submitted,

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[8] *13 Cornell Law Quarterly 499 (506).*